

Appl. No. 10/758,357  
Response dated October 13, 2006  
Reply to Office Action of July 13, 2006

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### REMARKS

Claim 1 has been amended to include the limitation of claim 4. Claim 4 has been cancelled. Claim 5 has been amended to depend from claim 1.

Claims 1, 4, 5, 13 and 14 have been rejected under 35 USC §102(e) as being anticipated by Sawhney (US Patent No. 6,818,018). The Examiner argues that the reference discloses injectable in situ polymerizable hydrogels that can be absorbable or non-absorbable by appropriate structural design of the hydrogel forming precursors and that the polymeric composition of a liquid succinic anhydride-bearing polymer and liquid diamine is met by the reference. However, it is respectfully submitted that the present non-aqueous liquid mixture is not anticipated by the Sawhney reference. Specifically, the present liquid succinic anhydride-bearing polyether is, itself, novel. It is designed to lower the activity of the anhydride as compared to the fast diffusing monomeric anhydrides of the prior art. A copending application, U.S. Serial No. 10/693,361, Functionalized, Absorbable, Segmented Copolyesters and Related Copolymers, was filed on October 24, 2003.

Furthermore, Sawhney is directed to compositions and methods for forming hydrogels in situ through a combination of physical and chemical crosslinking processes. The physical crosslinking aspect of Sawhney is clearly irrelevant to the present invention. Looking, therefore, only to the chemical crosslinking processes disclosed by Sawhney, the reference requires "macromers," defined as water soluble polymerizable polymeric monomers, which may include several functional groups to

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facilitate chemical crosslinking reactions. The macromers include water soluble crosslinking agents and a water soluble crosslinkable polymer. The water soluble crosslinking agents include a water soluble polymeric backbone and a polymerizable region. By virtue of their water solubility, all of the water soluble crosslinking agents and the water soluble crosslinkable polymers disclosed by Sawhney are aqueous. It is only through the benefit of hindsight derived from a review of the present specification that the Examiner has been able to pick through the lengthy disclosure of Sawhney to identify functional groups which may be employed as the polymerizable region of the otherwise water soluble crosslinking agents which are similar to the non-aqueous components of the present claims. It is submitted that a review of the Sawhney patent would not lead one of ordinary skill in the art to the present non-aqueous composition as Sawhney discloses aqueous compositions which may merely include similar functional groups. Accordingly, it is requested that the Examiner reconsider and withdraw the present rejection.

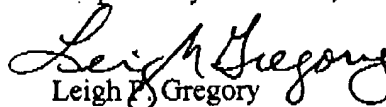
Claims 1, 4, 5, and 10 – 14 have been rejected under 35 USC §103(a) as being unpatentable over Sawhney in view of Trieu (US 20020026244 A1). The Examiner argues that Sawhney discloses the invention substantially as claimed but fails to disclose its use as a precursor for the treatment of a herniated disc or a precursor for a prosthetic intervertebral disc nucleus pulposus. However, as the Sawhney reference does not disclose or render obvious the present claimed invention, as discussed above, it is requested that the Examiner reconsider and withdraw the present rejection.

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Accordingly, it is submitted that the present application is in condition for allowance and such action is respectfully requested.

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Respectfully submitted,

  
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